



## 2003 ASSEMBLY BILL 616

October 27, 2003 - Introduced by Representatives McCORMICK, BIES, COGGS, COLON, CULLEN, GRONEMUS, HAHN, HEBL, HINES, JOHNSRUD, KRAWCZYK, KREIBICH, MILLER, OTT, PETROWSKI, POCAN, RICHARDS, SHERMAN, SHILLING, STASKUNAS, TAYLOR, TURNER, VAN ROY and WEBER, cosponsored by Senators LASSA, M. MEYER, MOORE, RISSER, ROESSLER and WIRCH. Referred to Committee on Corrections and the Courts.

1     **AN ACT** *to repeal* 20.550 (1) (ja), 51.45 (12) (b) 2., 977.07 (2) and 977.08 (2) (d);  
2           *to renumber and amend* 967.06; *to consolidate, renumber and amend*  
3           51.45 (12) (b) (intro.), 1. and 3.; *to amend* 20.550 (1) (f), 20.550 (1) (fb), 51.15  
4           (9), 51.20 (3), 51.20 (18) (c), 51.35 (1) (e) 1., 51.35 (1) (e) 2. c., 51.45 (12) (c) 2.,  
5           51.45 (13) (b) 2., 51.45 (13) (d), 51.45 (13) (j), 51.45 (16) (c), 55.06 (11) (a), 303.065  
6           (5) (dm), 809.30 (2) (d), 814.69 (1) (a), 880.33 (2) (a) 2., 973.06 (1) (e), 977.02 (2m),  
7           977.02 (3), 977.05 (4) (gm), 977.05 (4) (h), 977.05 (4) (i) 4., 977.06 (1) (a), 977.06  
8           (1m), 977.06 (2) (a), 977.06 (2) (am), 977.07 (1) (a), 977.07 (1) (c), 977.08 (1),  
9           977.08 (2) (intro.) and 977.085 (3); and *to create* 20.550 (1) (j), 20.550 (1) (ja),  
10          51.60, 55.06 (11) (bm), 967.06 (2) (b) and 977.07 (2g) of the statutes; **relating**  
11          **to:** indigency determinations and provision of legal services by the State Public  
12          Defender and making appropriations.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the State Public Defender (SPD) provides counsel to represent people in various legal proceedings, including criminal proceedings that

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may result in imprisonment, emergency detention or involuntary civil commitment proceedings, proceedings for the protective placement of an adult, paternity determinations, and juvenile delinquency proceedings. The SPD provides counsel to children regardless of the child's income or assets, but only provides counsel to adults whom the SPD determines are indigent.

Current law provides that a person is indigent for purposes of SPD representation if the person's income and assets, after deduction for reasonable and necessary living expenses, are insufficient to cover the cost of effective legal representation. Current law equates reasonable and necessary living expenses with benefit amounts under the former Aid to Families with Dependent Children program.

However, in determining whether a person can afford counsel, courts are not limited by the SPD indigency criteria. If a person is the subject of a legal proceeding for which appointed counsel is a right for persons who cannot afford counsel, and the person offers proof that he or she cannot afford counsel, the court must independently review the person's circumstances. If the court finds that the person cannot afford counsel and does not meet the criteria for SPD appointment, the court must appoint private counsel and the county in which the court sits must pay the appointed counsel.

Effective January 1, 2004, this bill changes the criteria for determining indigency for purposes of SPD representation. Under the bill, a person is indigent for purposes of SPD representation if he or she meets the financial eligibility criteria for the Wisconsin Works program (the person's household income does not exceed 115% of the federal poverty line and the person's household assets, after excluding up to \$10,000 for a vehicle and the value of the person's home, do not exceed \$2,500), except that the asset exclusion for a home is limited to \$30,000 for SPD representation.

The bill further requires that counties reimburse the SPD for providing counsel to persons who qualify as indigent under the bill, but who would not qualify as indigent under current law. The reimbursement requirement applies to cases for which the SPD assigns counsel on or after January 1, 2004, and before June 26, 2005. The bill requires the SPD to charge counties specified amounts based on the type of case for which counsel is provided, for example, a homicide, a misdemeanor, or a civil commitment. The bill also provides the State Public Defender Board position authority to hire 44.25 full-time equivalent positions on January 1, 2004, to be funded from the fees paid by counties. These positions are converted to general purpose revenue positions on June 26, 2005.

Finally, effective January 1, 2004, the bill requires the SPD to provide legal representation to any person, regardless of whether the person is indigent, who seeks SPD representation and is the subject of an involuntary commitment proceeding for mental health or alcoholism treatment, a protective placement proceeding, or a proceeding to appoint a guardian because the person is alleged to be not competent to refuse psychotropic medication.



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1           20.550 (1) (j) *Payments from counties; private bar and investigator*  
2 *reimbursement.* All moneys received from fees paid by counties under 2003  
3 Wisconsin Act .... (this act), section 46 (1), after deducting the amounts appropriated  
4 under par. (ja), to reimburse private attorneys and contract for the services of private  
5 investigators in cases for which counties pay a fee under 2003 Wisconsin Act .... (this  
6 act), section 46 (1).

7           **SECTION 5.** 20.550 (1) (ja) of the statutes is created to read:

8           20.550 (1) (ja) *Payments from counties; state public defender representation.*  
9 As a continuing appropriation, from the moneys received from fees paid by counties  
10 under 2003 Wisconsin Act .... (this act), section 46 (1), the amounts in the schedule  
11 for the costs of representation provided by the office of the state public defender in  
12 cases for which counties pay a fee under 2003 Wisconsin Act .... (this act), section 46  
13 (1).

14           **SECTION 6.** 20.550 (1) (ja) of the statutes, as created by 2003 Wisconsin Act ....  
15 (this act), is repealed.

16           **SECTION 7.** 51.15 (9) of the statutes is amended to read:

17           51.15 (9) NOTICE OF RIGHTS. At the time of detention the individual shall be  
18 informed by the director of the facility or such person's designee, both orally and in  
19 writing, of his or her right to contact an attorney and a member of his or her  
20 immediate family, the right to have an attorney provided at public expense, as  
21 provided under s. ~~967.06~~ and ch. ~~977~~, if the individual is a child or is indigent, 51.60,  
22 and the right to remain silent and that the individual's statements may be used as  
23 a basis for commitment. The individual shall also be provided with a copy of the  
24 statement of emergency detention.

25           **SECTION 8.** 51.20 (3) of the statutes is amended to read:

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1           51.20 (3) LEGAL COUNSEL. At the time of the filing of the petition the court shall  
2 assure that the subject individual is represented by adversary counsel.—If the  
3 individual claims or appears to be indigent, the court shall refer the person to the  
4 authority for indigency determinations specified under s. 977.07 (1).—If the  
5 individual is a child, the court shall refer that child by referring the individual to the  
6 state public defender, who shall appoint counsel for the ~~child~~ individual without a  
7 determination of indigency, as provided in s. ~~48.23 (4)~~ 51.60.

8           **SECTION 9.** 51.20 (18) (c) of the statutes is amended to read:

9           51.20 (18) (c) Expenses of the proceedings from the presentation of the  
10 statement of emergency detention or petition for commitment to the conclusion of the  
11 proceeding shall be allowed by the court and paid by the county from which the  
12 subject individual is detained, committed, or released, in the manner that the  
13 expenses of a criminal prosecution are paid, as provided in s. 59.64 (1). Payment of  
14 attorney fees for ~~appointed attorneys in the case of children and indigents~~ appointed  
15 under s. 51.60 shall be in accordance with ch. 977.

16           **SECTION 10.** 51.35 (1) (e) 1. of the statutes is amended to read:

17           51.35 (1) (e) 1. Whenever any transfer between different treatment facilities  
18 results in a greater restriction of personal freedom for the patient and whenever the  
19 patient is transferred from outpatient to inpatient status, the department or the  
20 county department specified under par. (a) shall inform the patient both orally and  
21 in writing of his or her right to contact an attorney and a member of his or her  
22 immediate family, the right to have counsel provided at public expense, as provided  
23 under s. ~~967.06~~ and ch. 977, if the patient is a child or is indigent 51.60, and the right  
24 to petition a court in the county in which the patient is located or the committing  
25 court for a review of the transfer.

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1           **SECTION 11.** 51.35 (1) (e) 2. c. of the statutes is amended to read:

2           51.35 (1) (e) 2. c. The patient's right to have counsel provided at public expense,  
3 as provided under s. ~~967.06~~ and ch. 977, if the patient is a child or is indigent 51.60.

4           **SECTION 12.** 51.45 (12) (b) (intro.), 1. and 3. of the statutes are consolidated,  
5 renumbered 51.45 (12) (b) and amended to read:

6           51.45 (12) (b) The physician, spouse, guardian, or a relative of the person  
7 sought to be committed, or any other responsible person, may petition a circuit court  
8 commissioner or the circuit court of the county in which the person sought to be  
9 committed resides or is present for commitment under this subsection. The petition  
10 shall: ~~1. State state~~ state facts to support the need for emergency treatment; ~~3. Be and~~  
11 be supported by one or more affidavits which that aver with particularity the factual  
12 basis for the allegations contained in the petition.

13           **SECTION 13.** 51.45 (12) (b) 2. of the statutes is repealed.

14           **SECTION 14.** 51.45 (12) (c) 2. of the statutes is amended to read:

15           51.45 (12) (c) 2. Assure that the person sought to be committed is represented  
16 by counsel and, ~~if the person claims or appears to be indigent, refer the person to the~~  
17 ~~authority for indigency determinations specified under s. 977.07 (1) or, if the person~~  
18 ~~is a child, refer that child~~ by referring the person to the state public defender, who  
19 shall appoint counsel for the ~~child~~ person without a determination of indigency, as  
20 provided in s. ~~48.23 (4)~~ 51.60.

21           **SECTION 15.** 51.45 (13) (b) 2. of the statutes is amended to read:

22           51.45 (13) (b) 2. Assure that the person is represented by counsel and, ~~if the~~  
23 ~~person claims or appears to be indigent, refer the person to the authority for~~  
24 ~~indigency determinations specified under s. 977.07 (1) or, if the person is a child, refer~~  
25 ~~that child~~ by referring the person to the state public defender, who shall appoint

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1 counsel for the ~~child~~ person without a determination of indigency, as provided in s.  
2 ~~48.23 (4)~~ 51.60. The person shall be represented by counsel at the preliminary  
3 hearing under par. (d). The person may, with the approval of the court, waive his or  
4 her right to representation by counsel at the full hearing under par. (f).

5 **SECTION 16.** 51.45 (13) (d) of the statutes is amended to read:

6 51.45 (13) (d) Whenever it is desired to involuntarily commit a person, a  
7 preliminary hearing shall be held under this paragraph. The purpose of the  
8 preliminary hearing shall be to determine if there is probable cause for believing that  
9 the allegations of the petition under par. (a) are true. The person shall be represented  
10 by counsel at the preliminary hearing and, ~~if the person is a child or is indigent,~~  
11 counsel shall timely be appointed at public expense, as provided in s. ~~967.06 and ch.~~  
12 ~~977~~ 51.60. Counsel shall have access to all reports and records, psychiatric and  
13 otherwise, which have been made prior to the preliminary hearing. The person shall  
14 be present at the preliminary hearing and shall be afforded a meaningful  
15 opportunity to be heard. Upon failure to make a finding of probable cause under this  
16 paragraph, the court shall dismiss the petition and discharge the person from the  
17 custody of the county department.

18 **SECTION 17.** 51.45 (13) (j) of the statutes is amended to read:

19 51.45 (13) (j) Upon the filing of a petition for recommitment under par. (h), the  
20 court shall fix a date for a recommitment hearing within 10 days, and assure that the  
21 person sought to be recommitted is represented by counsel and, ~~if the person is~~  
22 ~~indigent, appoint~~ by appointing counsel for him or her, ~~unless waived as provided~~  
23 under s. 51.60. The provisions of par. (e) relating to notice and to access to records,  
24 names of witnesses, and summaries of their testimony shall apply to recommitment

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1 hearings under this paragraph. At the recommitment hearing, the court shall  
2 proceed as provided under pars. (f) and (g).

3 **SECTION 18.** 51.45 (16) (c) of the statutes is amended to read:

4 51.45 (16) (c) Payment of attorney fees for ~~appointed attorneys in the case of~~  
5 ~~children and indigents~~ counsel appointed under s. 51.60 shall be in accordance with  
6 ch. 977.

7 **SECTION 19.** 51.60 of the statutes is created to read:

8 **51.60 Appointment of counsel. (1) ADULTS.** (a) In any situation under this  
9 chapter in which an adult person has a right to be represented by counsel, the person  
10 shall be referred as soon as practicable to the state public defender, who shall appoint  
11 counsel for the person under s. 977.08 without a determination of indigency.

12 (b) Except as provided in s. 51.45 (13) (b) 2., par. (a) does not apply if the person  
13 knowingly and voluntarily waives counsel.

14 **(2) CHILDREN.** In any situation under this chapter in which a child has a right  
15 to be represented by counsel, counsel for the child shall be appointed as provided in  
16 s. 48.23 (4).

17 **(3) RETAINED COUNSEL.** Notwithstanding subs. (1) and (2), a person subject to  
18 proceedings under this chapter is entitled to retain counsel of his or her own choosing  
19 at his or her own expense.

20 **SECTION 20.** 55.06 (11) (a) of the statutes is amended to read:

21 55.06 (11) (a) If from personal observation of a sheriff, police officer, fire fighter,  
22 guardian, if any, or authorized representative of a board designated under s. 55.02  
23 or an agency designated by it it appears probable that an individual will suffer  
24 irreparable injury or death or will present a substantial risk of serious physical harm  
25 to others as a result of developmental disabilities, infirmities of aging, chronic

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1 mental illness, or other like incapacities if not immediately placed, the person  
2 making the observation may take into custody and transport the individual to an  
3 appropriate medical or protective placement facility. The person making placement  
4 shall prepare a statement at the time of detention providing specific factual  
5 information concerning the person's observations and the basis for emergency  
6 placement. The statement shall be filed with the director of the facility and shall also  
7 be filed with any petition under sub. (2). At the time of placement the individual shall  
8 be informed by the director of the facility or the director's designee, both orally and  
9 in writing, of his or her right to contact an attorney and a member of his or her  
10 immediate family and the right to have an attorney provided at public expense, as  
11 provided under ~~s. 967.06 and ch. 977~~, if the individual is a child or is indigent par.  
12 (bm). The director or designee shall also provide the individual with a copy of the  
13 statement by the person making emergency placement.

14 **SECTION 21.** 55.06 (11) (bm) of the statutes is created to read:

15 55.06 (11) (bm) 1. Unless an adult individual subject to an emergency  
16 placement under par. (a) knowingly and voluntarily waives counsel, the individual  
17 shall be referred as soon as practicable to the state public defender, who shall appoint  
18 counsel for the individual under s. 977.08 without a determination of indigency.

19 2. If a child is subject to an emergency placement under par. (a), counsel for the  
20 child shall be appointed as provided in s. 48.23 (4).

21 3. Notwithstanding subds. 1. and 2., a person subject to an emergency  
22 placement under par. (a) is entitled to retain counsel of his or her own choosing at  
23 his or her own expense.

24 **SECTION 22.** 303.065 (5) (dm) of the statutes is amended to read:

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1           303.065 (5) (dm) Payment for legal representation under s. 977.07 ~~(2)~~ (2m),  
2           977.075 or 977.076;

3           **SECTION 23.** 809.30 (2) (d) of the statutes, as affected by Supreme Court Order  
4           02-01, is amended to read:

5           809.30 (2) (d) *Indigency redetermination.* Except as provided in this  
6           paragraph, whenever a person whose trial counsel is appointed by the state public  
7           defender files a notice under par. (b) requesting public defender representation for  
8           purposes of postconviction or postdisposition relief, the prosecutor may, within 5  
9           days after the notice is served and filed, file in the circuit court and serve upon the  
10          state public defender a request that the person's indigency be redetermined before  
11          counsel is appointed or transcripts are requested. This paragraph does not apply to  
12          a child or juvenile who is entitled to be represented by counsel under s. 48.23, 51.60  
13          (1), 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23.

14          **SECTION 24.** 814.69 (1) (a) of the statutes is amended to read:

15          814.69 (1) (a) For a transcript under SCR 71.04, a fee at the rate of \$1.50 per  
16          25-line page for the original and 50 cents per 25-line page for the duplicate. Except  
17          as provided in s. 967.06 (3), the fee shall be paid by the county treasurer upon the  
18          certificate of the clerk of court.

19          **SECTION 25.** 880.33 (2) (a) 2. of the statutes is amended to read:

20          880.33 (2) (a) 2. If the person requests but is unable to obtain legal counsel, the  
21          court shall appoint legal counsel. If the petition contains the allegations under s.  
22          880.07 (1m), the court shall refer the person to the state public defender, who shall  
23          appoint counsel under s. 977.08 without a determination of indigency. If the person  
24          is represented by counsel appointed under s. 977.08 in a proceeding for a protective

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1 placement under s. 55.06 ~~or for the appointment of a guardian under s. 880.07 (1m),~~  
2 the court shall order the counsel appointed under s. 977.08 to represent the person.

3 **SECTION 26.** 967.06 of the statutes is renumbered 967.06 (1) and amended to  
4 read:

5 967.06 (1) As soon as practicable after a person has been detained or arrested  
6 in connection with any offense ~~which~~ that is punishable by incarceration, or in  
7 connection with any civil commitment proceeding, or in any other situation in which  
8 a person is entitled to counsel regardless of ability to pay under the constitution or  
9 laws of the United States or this state, the person shall be informed of his or her right  
10 to counsel. ~~Persons~~

11 (2) (a) Except as provided in par. (b), a person entitled to counsel under sub.  
12 (1) who indicate indicates at any time that ~~they wish~~ he or she wants to be  
13 represented by a lawyer, and who ~~claim that they are~~ claims that he or she is not able  
14 to pay in full for a lawyer's services, shall immediately be permitted to contact the  
15 authority for indigency determinations specified under s. 977.07 (1). The authority  
16 for indigency determination in each county shall have daily telephone access to the  
17 county jail in order to identify all persons who are being held in the jail. The jail  
18 personnel shall provide by phone information requested by the authority.

19 (3) In any case in which the state public defender provides representation to  
20 an indigent person, the public defender may request that the applicable court  
21 reporter or clerk of circuit court prepare and transmit any transcript or court record.  
22 The request shall be complied with. The state public defender shall, from the  
23 appropriation under s. 20.550 (1) (f), compensate the court reporter or clerk of circuit  
24 court for the cost of preparing, handling, duplicating, and mailing the documents.

25 **SECTION 27.** 967.06 (2) (b) of the statutes is created to read:

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1           967.06 (2) (b) If the person indicating that he or she wants to be represented  
2 by a lawyer is detained under ch. 51 or 55, the person shall be referred for  
3 appointment of counsel as provided under s. 51.60 or 55.06 (11) (bm), whichever is  
4 applicable.

5           **SECTION 28.** 973.06 (1) (e) of the statutes is amended to read:

6           973.06 (1) (e) Attorney fees payable to the defense attorney by the county or  
7 the state. If the court determines at the time of sentencing that the defendant's  
8 financial circumstances are changed, the court may adjust the amount in accordance  
9 with s. 977.07 (1) (a) and ~~(2)~~ (2g).

10          **SECTION 29.** 977.02 (2m) of the statutes is amended to read:

11          977.02 (2m) Promulgate rules regarding eligibility for legal services under this  
12 chapter, including legal services for children who are entitled to be represented by  
13 counsel without a determination of indigency, as provided in s. 48.23 (4), 51.60 (1),  
14 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23 (4).

15          **SECTION 30.** 977.02 (3) of the statutes is amended to read:

16          977.02 (3) Promulgate rules regarding the determination of indigency of  
17 persons entitled to be represented by counsel, other than ~~children~~ persons who are  
18 entitled to be represented by counsel under s. 48.23, 51.60 (1), 55.06 (11) (a), 880.33  
19 (2) (a) 2., or 938.23, including the time period in which the determination must be  
20 made and the criteria to be used to determine indigency and partial indigency.

21          **SECTION 31.** 977.05 (4) (gm) of the statutes is amended to read:

22          977.05 (4) (gm) In accordance with the standards under pars. (h) and (i), accept  
23 referrals from judges and courts for the provision of legal services without a  
24 determination of indigency of ~~children~~ persons who are entitled to be represented by  
25 counsel under s. 48.23, 51.60 (1), 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, appoint

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1 counsel in accordance with contracts and policies of the board, and inform the  
2 referring judge or court of the name and address of the specific attorney who has been  
3 assigned to the case.

4 **SECTION 32.** 977.05 (4) (h) of the statutes is amended to read:

5 977.05 (4) (h) Accept requests for legal services from ~~children~~ persons who are  
6 entitled to be represented by counsel under s. 48.23, 51.60 (1), 55.06 (11) (a), 880.33  
7 (2) (a) 2., or 938.23 and from indigent persons who are entitled to be represented by  
8 counsel under s. 967.06 or who are otherwise so entitled under the constitution or  
9 laws of the United States or this state and provide such persons with legal services  
10 when, in the discretion of the state public defender, such provision of legal services  
11 is appropriate.

12 **SECTION 33.** 977.05 (4) (i) 4. of the statutes is amended to read:

13 977.05 (4) (i) 4. Cases involving persons subject to emergency detention or  
14 involuntary civil commitment under ch. 51, emergency detention under s. 55.06 (11)  
15 (a), or a guardianship petition containing the allegations under s. 880.07 (1m).

16 **SECTION 34.** 977.06 (1) (a) of the statutes, as affected by 2003 Wisconsin Act 33,  
17 is amended to read:

18 977.06 (1) (a) Verify the information necessary to determine indigency under  
19 s. 977.07 ~~(2)~~ (2g). The information provided by a person seeking assigned counsel  
20 that is subject to verification shall include any social security numbers provided on  
21 an application under sub. (1m), income records, value of assets, eligibility for public  
22 assistance, and claims of expenses.

23 **SECTION 35.** 977.06 (1m) of the statutes is amended to read:

24 977.06 (1m) APPLICATION FOR REPRESENTATION. The state public defender shall  
25 request each person seeking to have counsel assigned for him or her under s. 977.08,

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1 other than a child person who is entitled to be represented by counsel under s. 48.23,  
2 51.60 (1), 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, to provide the state public  
3 defender with his or her social security number and the social security numbers of  
4 his or her spouse and dependent children, if any.

5 **SECTION 36.** 977.06 (2) (a) of the statutes is amended to read:

6 977.06 (2) (a) A person seeking to have counsel assigned for him or her under  
7 s. 977.08, other than a child person who is entitled to be represented by counsel under  
8 s. 48.23, 51.60 (1), 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, shall sign a statement  
9 declaring that he or she has not disposed of any assets for the purpose of qualifying  
10 for that assignment of counsel. If the representative or authority making the  
11 indigency determination finds that any asset was disposed of for less than its fair  
12 market value for the purpose of obtaining that assignment of counsel, the asset shall  
13 be counted under s. 977.07 (2) (2g) at its fair market value at the time it was disposed  
14 of, minus the amount of compensation received for the asset.

15 **SECTION 37.** 977.06 (2) (am) of the statutes is amended to read:

16 977.06 (2) (am) A person seeking to have counsel assigned for him or her under  
17 s. 977.08, other than a child person who is entitled to be represented by counsel under  
18 s. 48.23, 51.60 (1), 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, shall sign a statement  
19 declaring that the information that he or she has given to determine eligibility for  
20 assignment of counsel he or she believes to be true and that he or she is informed that  
21 he or she is subject to the penalty under par. (b).

22 **SECTION 38.** 977.07 (1) (a) of the statutes is amended to read:

23 977.07 (1) (a) Determination of indigency for persons entitled to counsel shall  
24 be made as soon as possible and shall be in accordance with the rules promulgated  
25 by the board under s. 977.02 (3) and the system established under s. 977.06. No

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1 determination of indigency is required for a ~~child~~ person who is entitled to be  
2 represented by counsel under s. 48.23, 51.60 (1), 55.06 (11) (a), 880.33 (2) (a) 2., or  
3 938.23.

4 **SECTION 39.** 977.07 (1) (c) of the statutes is amended to read:

5 977.07 (1) (c) For all referrals made under ss. 809.30, 974.06 (3) (b), and 974.07  
6 (11), except a referral of a child who is entitled to be represented by counsel under  
7 s. 48.23, 51.60 (1), 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, a representative of the  
8 state public defender shall determine indigency. For referrals made under ss. 809.30  
9 and 974.06 (3) (b), except a referral of a child who is entitled to be represented by  
10 counsel under s. 48.23 or 938.23, the representative of the state public defender may,  
11 unless a request for redetermination has been filed under s. 809.30 (2) (d) or the  
12 defendant's request for representation states that his or her financial circumstances  
13 have materially improved, rely upon a determination of indigency made for purposes  
14 of trial representation under this section.

15 **SECTION 40.** 977.07 (2) of the statutes is repealed.

16 **SECTION 41.** 977.07 (2g) of the statutes is created to read:

17 977.07 (2g) The representative of the state public defender or the authority for  
18 indigency determinations specified under sub. (1) shall determine that an individual  
19 is indigent if the individual satisfies the financial eligibility requirements for a  
20 Wisconsin works group under s. 49.145 (3), except that in determining the value of  
21 the individual's assets under s. 49.145 (3) (a), the representative of the state public  
22 defender or the authority shall exclude only up to \$30,000 of the equity value of a  
23 home that serves as the individual's homestead. The state public defender shall  
24 consider any assets or income of the spouse of the person claiming to be indigent as

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1 if they were assets of the person, unless the spouse was the victim of a crime allegedly  
2 committed by the person.

3 **SECTION 42.** 977.08 (1) of the statutes is amended to read:

4 977.08 (1) If the representative or the authority for indigency determinations  
5 specified under s. 977.07 (1) refers a case to or within the office of the state public  
6 defender or if a case is referred under s. 48.23 (4), 51.60 (1), 55.06 (11) (bm) 1., 880.33  
7 (2) (a) 2., or 938.23 (4), the state public defender shall assign counsel according to  
8 subs. (3) and (4). If a defendant makes a request for change of attorney assignment,  
9 the change of attorney must be approved by the circuit court.

10 **SECTION 43.** 977.08 (2) (intro.) of the statutes is amended to read:

11 977.08 (2) (intro.) All attorneys in a county shall be notified in writing by the  
12 state public defender that a set of lists is being prepared of attorneys willing to  
13 represent children persons referred under s. 48.23 (4), 51.60 (1), 55.06 (11) (bm) 1.,  
14 880.33 (2) (a) 2., or 938.23 (4) and indigent clients in the following:

15 **SECTION 44.** 977.08 (2) (d) of the statutes is repealed.

16 **SECTION 45.** 977.085 (3) of the statutes is amended to read:

17 977.085 (3) The board shall provide quarterly reports to the joint committee  
18 on finance on the status of reimbursement for or recoupment of payments under ss.  
19 48.275, 757.66, 938.275, 977.06, ~~977.07 (2)~~, 977.075 and 977.076, including the  
20 amount of revenue generated by reimbursement and recoupment. The quarterly  
21 reports shall include any alternative means suggested by the board to improve  
22 reimbursement and recoupment procedures and to increase the amount of revenue  
23 generated. The department of justice, district attorneys, circuit courts and  
24 applicable county agencies shall cooperate by providing any necessary information  
25 to the state public defender.

**ASSEMBLY BILL 616****SECTION 46. Nonstatutory provisions.**

## (1) COUNTY PAYMENTS.

(a) The state public defender shall charge counties the following fees for providing legal representation to persons who are determined to be indigent under section 977.07 (2g) of the statutes, as created by this act, for whom an indigency finding would not have been made under section 977.07 (2), 2001 stats., and for whom the state public defender assigns counsel under section 977.08 of the statutes, on or after January 1, 2004, and before June 26, 2005:

1. For an appeal, other than under chapter 980 of the statutes, \$1,391.

2. For a homicide, \$4,466.

3. For a class A, B, or C felony, other than a homicide, \$1,447.

4. For a felony not included under subdivision 2. or 3., \$589.

5. For a misdemeanor, \$241.

6. For a commitment, other than under chapter 980 of the statutes, \$176.

7. For a proceeding under chapter 55 of the statutes, \$250.

8. For a paternity proceeding, \$369.

9. For a proceeding to revoke probation, parole, or extended supervision, \$383.

10. For a proceeding to terminate parental rights, \$1,365.

11. For a commitment proceeding under chapter 980 of the statutes, \$3,067.

12. For a postcommitment proceeding under chapter 980 of the statutes, \$823.

13. For any case not included under subdivisions 1. to 12., \$208.

(b) The state public defender shall assess the applicable fee when the public defender assigns counsel for a person. For criminal cases, the county in which a defendant is charged shall pay the fee. For civil cases, the county in which the case is commenced shall pay the fee. Fees paid by counties under this subsection shall

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1 be credited to the appropriation accounts under section 20.550 (1) (j) and (ja) of the  
2 statutes, as created by this act.

3 (2) ATTORNEY FEES. Notwithstanding section 48.275 (2), 938.275 (2), 973.06 (1)  
4 (e), or 977.075 of the statutes, the state may not collect attorney fees from persons  
5 who are determined to be indigent under section 977.07 (2g) of the statutes, as  
6 created by this act, for whom an indigency finding would not have been made under  
7 section 977.07 (2), 2001 stats., and for whom the state public defender assigns  
8 counsel under section 977.08 of the statutes, on or after January 1, 2004, and before  
9 June 26, 2005. The court may order such persons to pay attorney fees as provided  
10 under section 973.06 (1) (e) of the statutes to the county that pays a fee under  
11 subsection (1) for the person's representation.

12 (3) POSITION INCREASE. The authorized FTE positions for the public defender  
13 board are increased by 44.25 PR positions on January 1, 2004, to be funded from the  
14 appropriation under section 20.550 (1) (ja) of the statutes, as created by this act, for  
15 the purpose of providing legal representation to persons for whom the state public  
16 defender assigns counsel.

17 (4) POSITION CHANGE.

18 (a) The authorized FTE positions for the public defender board are decreased  
19 by 44.25 PR positions on June 26, 2005, to convert the PR positions authorized under  
20 subsection (3) to GPR positions.

21 (b) The authorized FTE positions for the public defender board are increased  
22 by 44.25 GPR positions on June 26, 2005, to be funded from the appropriation under  
23 section 20.550 (1) (c) of the statutes, to convert the PR positions authorized under  
24 subsection (3) to GPR positions.

25 **SECTION 47. Initial applicability.**

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1           (1) INDIGENCY DETERMINATIONS. The treatment of sections 20.550 (1) (fb),  
2           303.065 (5) (dm), 973.06 (1) (e), 977.06 (1) (a), 977.06 (2) (a), 977.07 (2) and (2g), and  
3           977.085 (3) of the statutes and SECTION 46 (1) of this act (with respect to the criteria  
4           for determining indigency) first apply to cases opened on the effective date of this  
5           subsection.

6           (2) REPRESENTATION IN CIVIL COMMITMENT, PROTECTIVE PLACEMENT, AND  
7           GUARDIANSHIP CASES.

8           (a) *Emergency mental health detentions.* The treatment of sections 51.15 (9),  
9           51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (1m) and (2)  
10          (a) and (am), 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the  
11          statutes (with respect to the appointment of counsel for persons subject to an  
12          emergency detention under section 51.15 of the statutes) first applies to emergency  
13          detentions occurring on the effective date of this paragraph.

14          (b) *Involuntary commitments for mental health treatment.* The treatment of  
15          sections 51.20 (3) and (18) (c), 51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h),  
16          and (i) 4., 977.06 (1m) and (2) (a) and (am), 977.07 (1) (a) and (c), and 977.08 (1) and  
17          (2) (intro.) and (d) of the statutes (with respect to the appointment of counsel for  
18          persons subject to an involuntary commitment proceeding under section 51.20 of the  
19          statutes) first applies to proceedings commenced on the effective date of this  
20          paragraph.

21          (c) *Transfers of patients.* The treatment of sections 51.35 (1) (e) 1. and 2. c.,  
22          51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (1m) and (2)  
23          (a) and (am), 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the  
24          statutes (with respect to the appointment of counsel for persons subject to a transfer

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1 under section 51.35 of the statutes) first applies to transfers occurring on the  
2 effective date of this paragraph.

3 (d) *Involuntary commitments for treatment of alcoholism.* The treatment of  
4 sections 51.45 (12) (b) (intro.), 1., 2., and 3., and (c) 2., (13) (b) 2., (d), and (j), and (16)  
5 (c), 51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (1m) and  
6 (2) (a) and (am), 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the  
7 statutes (with respect to the appointment of counsel for persons subject to a  
8 commitment or recommitment proceeding under section 51.45 of the statutes) first  
9 applies to proceedings for commitment or recommitment commenced on the effective  
10 date of this paragraph.

11 (e) *Protective placements proceedings.* The treatment of sections 51.60, 55.06  
12 (11) (a) and (bm), 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (1m)  
13 and (2) (a) and (am), 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of  
14 the statutes (with respect to the appointment of counsel for persons subject to an  
15 emergency detention under section 55.06 (11) of the statutes) first applies to  
16 emergency detentions occurring on the effective date of this paragraph.

17 (f) *Guardianship proceedings.* The treatment of sections 51.60, 809.30 (2) (d),  
18 880.33 (2) (a) 2., 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (1m) and (2) (a) and  
19 (am), 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the statutes (with  
20 respect to the appointment of counsel for persons subject to a guardianship  
21 proceeding under chapter 880 of the statutes) first applies to guardianship  
22 proceedings commenced on the effective date of this paragraph.

23 **SECTION 48. Effective dates.** This act takes effect on January 1, 2004, except  
24 as follows:

